

Posted: 6/26/2001

2:50 p.m.



Order 2001-6-23

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on 26th day of June, 2001

Served: June 29, 2001

Complaint of

NORTHWEST AIRLINES, INC.

Against

**THE COUNCIL OF THE EUROPEAN
UNION AND THE GOVERNMENTS OF
THE 15 EU MEMBER STATES**

under 49 U.S.C. § 41310

Docket OST-99-5011 - 40.

ORDER GRANTING WAIVER

On January 15, 1999, Northwest Airlines, Inc. (Northwest) filed a complaint under 49 U.S.C. § 41310 against the Council of the European Union and the Governments of the 15 EU Member States (referred to as the EU and the Member States) regarding EU regulations that would restrict the use of hushkitted aircraft. Northwest states that the regulation would unreasonably restrict U.S. operators' access to Europe in contravention of U.S. rights under the Chicago Convention and bilateral air services agreements. Northwest urges the Department to take action to redress the economic harm caused by the EU regulation, which it argues constitutes an "unjustifiable or unreasonable...practice against an air carrier" and "imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market," warranting action under the statute.¹

By Order 99-1-10, the Department invited all interested persons to answer Northwest's complaint in Docket OST-99-5011. British Airways PLC and Virgin Atlantic Airways Limited (filed jointly); Lufthansa German Airlines; the Cargo Airline Association; Societe Air France; Quiet Technology Venture, Ltd.; the National Air Carrier Association; Pratt & Whitney; the Air Transport Association of America; AvAero; Federal Express Corporation; Fine Air Services, Inc.; Intrepid Aviation Partners, L.L.C.; United Air Lines, Inc.; Delta Air Lines, Inc.; Kitty Hawk Aircargo, Inc. and American International Airways, Inc. (filed jointly); the Nordam Group, Inc.; Burbank Aeronautical Corporation and ABS Partnership and Duganair Technologies, Inc. (filed jointly); ABX Air, Inc.; and the Association of European Airlines filed answers. Northwest filed a reply to the answers. The Cargo Airline Association filed an additional response.²

¹ We summarized the complaint more fully in Order 99-1-10.

² The additional response was accompanied by a motion for leave to file an otherwise unauthorized document. We granted the motion by Order 99-5-7.

By a series of actions the Department has extended the deadline for action on Northwest's complaint in order to facilitate a negotiated resolution to the issues raised.³ The latest extension runs through July 1, 2001. On March 14, 2000, the U.S. Government invoked the dispute resolution procedures provided for under Article 84 of the Chicago Convention and filed a complaint with the International Civil Aviation Organization (ICAO).

On June 13, 2001, Northwest agreed to a further limited waiver of the statutory deadline, specifically through December 1, 2001, in light of the U.S. Government's involvement in proceedings before ICAO to resolve this dispute. Northwest states, however, that it retains the option to withdraw its consent to a waiver of the deadline, particularly if the EU fails to participate in good faith in proceedings before ICAO, or should a settlement be reached that continues to discriminate against U.S. carriers.

After careful consideration of Northwest's submission and other relevant factors, we believe that the public interest is best served by granting Northwest's waiver, and deferring the deadline for action on the complaint through December 1, 2001.

ACCORDINGLY,

1. We grant the request of Northwest Airlines, Inc. for a waiver of the statutory deadline in order to defer through December 1, 2001, the period for taking action on its complaint in Docket OST-99-5011; and
2. We will serve this order on all parties to the complaint of Northwest Airlines, Inc., in Docket OST-99-5011; the Ambassadors of the Delegation of the Commission of the European Communities, Germany, France, and the United Kingdom in Washington D.C.; the U.S. Department of State (Office of Aviation Negotiations); the Assistant U.S. Trade Representative (Office of the United States Trade Representative); and the U.S. Department of Commerce (Office of Service Industries).

By:

SUSAN McDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this notice is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

³See Orders 2000-11-30, 2000-7-34, 2000-2-2 and Order 99-5-7 and orders cited therein at 2.